



The Department of Health and Human Services team contributes to the lives and health of Nebraskans every day. Our mission, "helping people live better lives," provides the motivation to make a difference. At every level of our organization, our goal is to be honest, trustworthy, competent and loyal. We strive to be transparent and accountable. With this in mind DHHS submits the following pieces of legislation for your consideration during the 2016 legislative session.

**LB 816 by Sen. Scheer - Allow for Records of DHHS Institutions to be Released as Allowed by HIPAA and Terminate Reporting Requirements Relating to Children's Behavioral Health**

Current Nebraska law is more restrictive than the federal Health Insurance Privacy and Portability Act (HIPPA) regarding the exchange of health information for individuals served in DHHS's institutions. This bill will align state law with federal HIPPA requirements, which provide the mechanism for patient privacy but also allow for certain sharing of information.

Current state law has led to difficulty providing information to other facilities or institutions that involve patients at DHHS facilities. Sharing this information is crucial in providing timely, quality treatment. If an individual is not cooperative in signing a release and does not have an attorney in fact or a guardian, the current state statute's limitations require treatment be stalled or require that a guardian be sought.

In addition, this statute makes it difficult for family members conducting genealogy research to receive records for deceased family members.

This bill also terminates reporting requirements relating to children's behavioral health. LB 603, passed in 2009, established the Children's Behavioral Health Helpline (referred to as the Nebraska Family Helpline), Family Navigator Program, and Post Adoption/Post Guardianship Services. It required an annual report to the Legislature. This bill eliminates the annual reporting requirement summarizing the activities of the programs.

Implemented in 2010, these programs are now established and have proven to be effective in serving children and families.

The contractors for these programs are already required to report to the Department their activities and outcomes as part of the Department's ongoing contract oversight and evaluation process and responsibilities. The reporting requirement is duplicative of ongoing agency activities.

**Referred to Health and Human Services Committee**

**LB 859 by Sen. Campbell - Revise Current State Statute on Uniform Credentialing Act Cease and Desist Orders**

This bill will amend statutes in the Uniform Credentialing Act (Neb. Rev. Stat. 38-140) related to cease and desist orders from Nebraska licensing boards to prevent violations of federal antitrust law and to comply with the U.S. Supreme Court decision *North Carolina State Bd. Of Dental Examiners v FTC*, February 2015.

This legislative proposal will provide protection from federal antitrust lawsuits for DHHS and for members of licensing boards in performing their authorized responsibilities while also retaining the ability for licensing boards to address unlicensed practice.

This legislation will allow Boards to make recommendations to the Department of Health and Human Services in order for a Cease and Desist letter to be generated by the director of the Division of Public Health, and remove the direct authority for the Board to issue such a letter as is allowed by the current statute.

**Referred to Health and Human Services Committee**

**LB 869 by Sen. Crawford - Medicaid Fingerprinting**

This bill requires that specified high-risk Nebraska Medicaid providers and persons with a 5 percent or more ownership of that provider submit fingerprints for nationwide criminal background checks. It allows the Nebraska State Patrol to complete the nationwide criminal background checks with the Federal Bureau of Investigations and give the results to Nebraska Medicaid.

This legislation is necessary for Nebraska Medicaid to comply with federal regulations (42 CFR 455.434) and continue receiving federal financial participation for Medicaid. New Medicaid provider screening and enrollment requirements in federal law require that states complete fingerprint based criminal background checks on providers at high risk of potential fraud, waste and abuse to the Medicaid program, and their owners.

The provider is responsible for the fees associated with this process and fingerprints are required upon submission of application.



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The provider will be denied if:

- They refuse or fail to submit fingerprints within thirty days of the request
- The owner(s) refuse(s) or fails to submit fingerprints within thirty days of the request
- The results find a criminal history that precludes participation

**Referred to Health and Human Services Committee**

### **LB 899 by Sen. Baker - Amend Lead Free Definition in Nebraska Safe Drinking Water Act**

This bill amends the definition of "lead free" in the Nebraska Safe Drinking Water Act to conform to the amended federal definition in the federal Safe Drinking Water Act. This applies to public water systems and the fittings that come into contact with drinking water. Public water systems do not have to change out their current system or immediately replace fittings. Rather, they must use new parts that meet the requirements the next time the system is replaced. Manufacturers now produce only parts that meet these requirements.

The federal definition of "lead free," was amended by Congress January 4, 2011 and became effective January 4, 2014. Nebraska is required to have laws and regulations as stringent as the federal laws and regulations concerning drinking water in order to maintain primacy, the authority to manage and enforce the drinking water program in the State. The United States Environmental Protection Agency gives the State of Nebraska that authority.

Since the effective date of the federal change (January 4, 2014), suppliers are no longer permitted to sell materials for drinking water systems that don't meet the new standard. There are no added or reduced costs, fees, or savings as a result.

**Referred to Health and Human Services Committee**

### **LB 924 by Sen. Kolterman - Permits Noncustodial Parent to Pay Support Obligation via Auto-Withdrawal**

This bill would allow a noncustodial parent who is not in arrears in his/her child support payments in an established court order, the option to pay outside the income withholding process that is currently mandated, specifically through an auto-withdrawal process,

provided the custodial parent and the Department so agree.

This provides an option for parents who would like to arrange for an auto-withdrawal for their convenience; for example, if the non-custodial parent's employer is slow on remitting payments or the non-custodial parent may change jobs.

Eligibility to participate requires that the parent must establish that they are current in their child support obligation. Then they will enter into a written, notarized agreement to authorize automatic withdrawals. Any partial or missed payment would subject the parent to the mandatory income withholding process set forth in the current statute required in the court's child support order and auto-withdrawal would no longer be an option.

**Referred to Judiciary Committee**

### **LB 963 by Sen. Fox -Changes provisions of the Nebraska Community Aging Services Act**

This bill makes two changes to statutes regarding the Area Agencies on Aging (AAA):

- The bill changes the AAA's area plan submission timeframes to mirror the federal regulations.
- This bill also repeals an outdated maintenance of effort funding requirement for four (4) of the Area Agencies on Aging in the Community Aging Services Act (CASA).

Currently, state statute requires the AAA's to submit area plans to the State Unit on Aging, within the Department of Health and Human Services, every five (5) years. Federal law outlines two (2), three (3) and four (4) year time frames.

If the changes are not made, Nebraska will be out of compliance with Federal regulations regarding area plan timeframes and will be asked to submit legislative changes again. This bill also equalizes how the current eight AAA's fund programs locally, as the four created after 1981 are not subject to the statutory requirements.

**Referred to Health and Human Services Committee**

### **LB 1011 by Sen. Campbell - Additional State Flexibility in Contracting for Behavioral Health Managed Care**

Nebraska Revised Statute §71-831, passed in 2012, prescribes financial and operational requirements for the administration of Medicaid behavioral health managed



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care. This bill provides additional flexibility in contracting with managed care organizations that deliver behavioral health.

There are three provisions that inhibit Nebraska Medicaid's ability to realize the financial and health outcome advantages of integrating benefits and services through the implementation of Heritage Health. The bill makes changes to these provisions allowing the Department additional flexibility in contracting with managed care plans. These provisions are:

- The current statute requires that 1.5% of all income and revenue earned by the contracted health plan be withheld. Forfeited funds within the 1.5% must be spent to fund behavioral health services. The proposed legislation permits the reinvestment of any remittance that the health plan must pay if it does not meet the minimum medical loss ratio to be reinvested for all the health needs of Medicaid clients.
- The current statute includes a cap on administrative spending of 7% with an allowance for an additional 3% for quality improvement activities. The administrative cap restricts the ability of health plans to invest in care management programs and could potentially lead to higher medical costs if this lack of investment results in lost opportunities to identify and treat health conditions in the most cost effective settings
- The total costs of the Heritage Health program will exceed \$6.9 billion over five (5) years. Profits over 1% for integrated contracts is a significant amount for integrated managed care contracts and will artificially inflate the overall costs to the Medicaid program. This bill recognizes this in allowing the Department additional flexibility is setting caps on profits and losses.

The Heritage Health Managed Care contracts will meet proposed requirements of the Centers for Medicare and Medicaid Services (CMS) for medical loss ratio and emphasis on integrated care coordination, quality care, and prevention of unavoidable medical events.

**Referred to Health and Human Services Committee**

### **LB 1039 by Sen. Coash - Standardize and clarify the definition of Intellectual Disabilities**

The term "Intellectual Disability" is defined in three different statutory locations. The definitions, however, are not consistent and do not currently reflect clinical best practices. This bill updates the current definition of "Intellectual Disabilities" to provide clarity and consistency to how the term is defined in statute. This bill also modernizes the clinical language used to better reflect accepted best practices.

The term "Intellectual Disability" is not consistently defined. This has resulted in courts making judicial findings that someone has an intellectual disability who doesn't meet the criteria used by DHHS or Medicaid.

In order to standardize and clarify the definition used across all populations served by DHHS, the agency proposes a Legislative Bill that would define Intellectual Disability in a manner that includes:

- An objective standard for the term "intellectual disability" that is consistent with generally accepted psychological standards;
- Makes clear that an intellectual disability for purposes of the Developmental Services Act is a sub-category of a developmental disability and is also subject to the adaptive functional limitation requirements up to institutional level of care for equal application of eligibility to all DD programs including Medicaid;
- Update the language of the statutes regarding the primary areas of adaptive functional activity to reflect current best practices; and
- Does not significantly impact the Registry of Needs and better reflect how the Department provides services.

**Referred to Health and Human Services Committee**

**For more information on these bills or any DHHS matter, please contact:**

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